

**Second Amendment to Agreement between
City and County of San Francisco Public Utilities Commission
and Santa Clara Valley Water District for
Long-Term Operation and Maintenance of the Intertie**

THIS SECOND AMENDMENT (“Second Amendment”) is made in the State of California on this _____ day of _____, 2024, between the City and County of San Francisco, acting by and through its Public Utilities Commission (“City”), and the Santa Clara Valley Water District (“District”), which are herein referred to collectively as “Parties” and individually as “Party.”

RECITALS

WHEREAS, On December 21, 1999, the Parties entered into the Agreement for Development of an Intertie Facility, which enabled the Parties to develop an interconnection of their respective water supply systems (“Intertie”), as authorized by San Francisco Public Utilities Commission Resolution No. 00-0033, dated January 25, 2000; San Francisco Board of Supervisors Resolution No. 641-00, dated July 24, 2000; and Santa Clara Valley Water District Board of Directors approved motion, dated December 21, 1999; and

WHEREAS, On December 21, 1999, the Parties also entered into the Agreement for Long Term Operation and Maintenance of the Intertie (“Agreement”), as authorized by San Francisco Public Utilities Commission Resolution No. 00-0033, dated January 25, 2000; San Francisco Board of Supervisors Resolution No. 641-00, dated July 24, 2000; and Santa Clara Valley Water District Board of Directors approved motion, dated December 21, 1999; and

WHEREAS, Section 3 of the Agreement provided, in part, that “[e]ither Party may operate the physical works of the Intertie ... for the delivery of water with the concurrence of the other Party,” and Section 4 of the Agreement provided, in part, that “[t]he City shall have primary responsibility for routine maintenance, replacement and repair of the physical works of the Shared Project Facilities,” or Intertie, as defined in the Agreement; and

WHEREAS, On March 2, 2009, the Parties entered into the First Amendment to the Agreement (“First Amendment”), as authorized by San Francisco Public Utilities Commission Resolution No. 08-0223, dated December 9, 2008; and San Francisco Board of Supervisors Resolution No. 60-09, dated February 24, 2009; and

WHEREAS, The First Amendment amended Section 4 of the Agreement, in part, to provide that “[t]he Parties shall jointly designate one of them to have primary responsibility for routine operation, maintenance, replacement, and repair of the physical works of the Shared Project Facilities” – the newly defined “O&M Party” – and to designate the District as the O&M

Party until at least December 31, 2013, without modifying either Party's ability to operate the Intertie under Section 3 of the Agreement; and

WHEREAS, The First Amendment also amended Section 15 of the Agreement to provide that the O&M Party, rather than the City, shall have lead responsibility for reconciliation of joint costs associated with the Intertie; and

WHEREAS, Before December 31, 2013, the Parties agreed to jointly designate the City as the O&M Party starting on January 1, 2014, pursuant to Section 4 of the Agreement, as amended, and the City has, in accordance, remained the O&M Party since that date; and

WHEREAS, The Parties now agree that the Intertie may be more efficiently operated and maintained by the District, given its proximity to the Intertie and the impact of the Intertie's operation on the District's system, and the District should thus be the O&M Party; and

WHEREAS, The Parties desire to amend the Agreement again on the terms and conditions set forth herein in order to (1) designate the District as the O&M Party from July 1, 2024 through June 30, 2029, with the Parties meeting and conferring before the end of this five-year period to determine, by mutual written agreement, which of them shall be the O&M Party beyond June 30, 2029, under Section 4 of the Agreement; (2) designate the O&M Party with primary responsibility for maintenance of operating permits and preparation of annual reports or plans under Section 5 of the Agreement; (3) provide that all costs associated with the operation of the Intertie to deliver "reimbursement water" shall be borne by the Party delivering that water under Section 14 of the Agreement; and (4) revise the terms for the annual reconciliation of water supplied through the Intertie under Section 17 of the Agreement.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the Parties agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term "Agreement" shall mean the Agreement for Long Term Operation and Maintenance of the Intertie dated December 21, 1999 between the City and the District, as amended by the First Amendment dated March 2, 2009.

1.2 **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications of Scope to the Agreement

The Agreement is hereby modified as follows:

2.1 **Maintenance, Replacement and Repair of the Intertie.** Section 4 of the Agreement, entitled “Maintenance, Replacement and Repair of the Intertie,” currently reads as follows:

The Parties shall jointly designate one of them to have primary responsibility for routine operation, maintenance, replacement and repair of the physical works of the Shared Project Facilities (“the O&M Party”). It is the Parties intent that the District shall be designated as the O&M Party until at least December 31, 2013. If mutually agreed, accomplishment of operation, maintenance, replacement and repair of physical works of the Shared Project Facilities may be contracted to a third party, with responsibility for contract administration by the City or the District as may be agreed. Routine operation, maintenance, replacement and repair of each Party’s Separate Facilities such as water treatment facilities, shall be the sole responsibility of each respective Party. The Parties shall establish and agree upon an annual plan and budget for operation, maintenance, repair, replacement or capital improvements during the Annual Meeting. Such plan shall include a contingency fund. The District or the City may repair or replace any of the physical works of the Shared Project Facilities, as consistent with the annual plan and budget, or as mutually agreed by the Parties.

Any fences and access gates to the Intertie shall be kept in good repair. Such gates shall be kept closed and locked except when in actual use. The Parties shall provide each other with a key to each lockable gate to the Intertie.

Such section is hereby amended in its entirety to read as follows:

One Party to this Agreement shall have primary responsibility for routine operation, maintenance, replacement and repair of the physical works of the Shared Project Facilities (“the O&M Party”). Following the Parties’ joint designation of the District as the O&M Party between March 2, 2009 and December 31, 2013, and the City as the O&M Party starting on January 1, 2014, the Parties agree that the District shall be designated the O&M Party starting on July 1, 2024, and shall remain the O&M Party through June 30, 2029.

If mutually agreed, accomplishment of operation, maintenance, replacement and repair of physical works of the Shared Project Facilities may be contracted to a third party, with responsibility for contract administration by the City or the District as may be agreed. Routine operation, maintenance, replacement and repair of each Party’s Separate Facilities, such as water treatment facilities, shall be the sole responsibility of each respective Party. The Parties shall establish and agree upon an annual plan and budget for operation, maintenance, repair, replacement or capital improvements during the Annual Meeting. Such plan shall include a contingency fund. The District or the City

may repair or replace any of the physical works of the Shared Project Facilities, as consistent with the annual plan and budget, or as mutually agreed by the Parties.

By March 1, 2029, the Parties shall meet and confer to decide which of them shall be designated the O&M Party as of July 1, 2029 and shall memorialize this designation in writing, signed by their General Manager and Chief Executive Officer, or the designees of their General Manager and Chief Executive Officer, by May 31, 2029. The Parties may change the O&M Party designation again at a future date, but no more frequently than once every five years, if mutually agreed and memorialized in writing as provided in the foregoing sentence.

Any fences and access gates to the Intertie shall be kept in good repair. Such gates shall be kept closed and locked except when in actual use. The Parties shall provide each other with a key to each lockable gate to the Intertie.

2.2 Maintenance of Operating Permits. Section 5 of the Agreement, entitled “Maintenance of Operating Permits,” currently reads as follows:

The City shall have primary responsibility for maintaining and obtaining all permits and preparing annual reports or plans as necessary to comply with current or future applicable local, state, or federal regulations for operation of the Intertie facilities, including those necessary for Separate Facilities. Such permits may include, but are not limited to Hazardous Material Business or Management Plans, Annual Certification, Hazardous Material Storage Permits, Hazardous Materials Waste Generation Permit, or Spill Prevention Control and Countermeasures Plan. District shall provide timely response for requested information relative to its Separate Facilities.

Such section is hereby amended in its entirety to read as follows:

The O&M Party shall have primary responsibility for maintaining and obtaining all permits and preparing annual reports or plans as necessary to comply with current or future applicable local, state, or federal regulations for operation of the Intertie facilities, including those necessary for Separate Facilities. Such permits may include, but are not limited to, Santa Clara County Department of Environmental Health permit, Hazardous Waste Generator Permit, Bay Area Air Quality Management District – Permit to Operate (generators), Milpitas Fire Department – Fire Code permit, Hazardous Materials Business Plan, Spill Prevention Control and Countermeasure Plan, and/or Operations Plan. The City shall provide timely response for requested information relative to its Separate Facilities.

2.3 Separate Costs of the Intertie. Section 14 of the Agreement, entitled “Separate Costs of the Intertie,” currently reads as follows:

All costs associated with the operation of the Intertie to transfer water between the Parties shall be borne by the Party receiving water. Such costs include, but are not limited to, labor and materials required for operation of each Party's water treatment facilities, additional local site operation staff or staff visits by the receiving Party, or additional maintenance staff or staff visits by the receiving Party which are in excess of the mutually agreed routine maintenance schedule.

Such section is hereby amended in its entirety to read as follows:

All costs associated with the operation of the Intertie to transfer water between the Parties for the purposes of an Emergency or Critical Work shall be borne by the Party receiving the water for that Emergency or Critical Work. Such costs include, but are not limited to, labor and materials required for operation of each Party's water treatment facilities, additional local site operation staff or staff visits, or additional maintenance staff or staff visits which are in excess of the mutually agreed routine maintenance schedule. After such a transfer, all costs associated with the operation of the Intertie to enable the Party that had received water during the Emergency or Critical Work to then deliver "reimbursement water" to the other Party, pursuant to Section 17 of this Agreement, shall be borne by the Party delivering the "reimbursement water." Such costs include, but are not limited to, labor and materials required for operation of each Party's water treatment facilities, additional local site operation staff or staff visits, or additional maintenance staff or staff visits which are in excess of the mutually agreed routine maintenance schedule.

2.4 Annual Reconciliation of Water Supplied Through the Intertie. Section 17 of the Agreement, entitled "Annual Reconciliation of Water Supplied Through the Intertie," currently reads as follows:

The Parties shall maintain accurate records of quantities of water supplied and received through the Intertie. The Parties shall reconcile deliveries and receipts of water during any given year against any existing carryover balance from the previous year during the Annual Meeting provided for in this Agreement. A Party who holds a credit after the annual reconciliation may (1) carry the credit forward subject to the annual reconciliation; or (2) request "reimbursement water" under a schedule and in a manner agreed to by the Parties. Notwithstanding the foregoing, a Party may not carry a credit beyond ten consecutive years without the agreement of the other Party. If the Party owing "reimbursement water" does not agree to carry forward a credit beyond ten years, then that Party shall pay for the credit water at the other Party's current wholesale rate for potable water. The District's wholesale rate shall be the sum of the "Zone 5 Basic Wateruser Charge" and the "Treated Water Surcharge" rates in effect at the time of exchange. The City's wholesale rate shall be the "Schedule W25 – Resale Use With Long Term Contract" rate in effect at the time of exchange, except that the monthly service charge shall not apply.

Such section is hereby amended in its entirety to read as follows:

The Parties shall maintain accurate records of quantities of water supplied and received through the Intertie. The Parties shall reconcile deliveries and receipts of water during any given Fiscal Year against any existing carryover balance from the previous Fiscal Year during the Annual Meeting provided for in this Agreement. A Party who holds a credit after the annual reconciliation (i.e., is owed water by the other Party due to deliveries that it made to that other Party during the previous Fiscal Year(s)) may (1) carry the credit forward into the next Fiscal Year subject to the next annual reconciliation; or (2) request from the other Party a delivery of the same quantity of water that it is owed (“reimbursement water”) under a schedule and in a manner agreed to by the Parties.

Notwithstanding the foregoing, a credit for water may not be carried forward for more than five (5) consecutive Fiscal Years without the agreement of both of the Parties. If both Parties do not agree to carry it forward more than five (5) consecutive Fiscal Years, the Party who holds the credit may request from the other Party a financial payment for the quantity of water that it is owed (rather than a delivery of that quantity of water under a schedule and in a manner agreed to by the Parties, which would be the default), notwithstanding the provision in Section 16 of this Agreement regarding the Parties’ intent that water supplied through the Intertie shall be reimbursed with water received through the Intertie. If such a request is made, the other Party shall pay for the credit water at the other Party’s current wholesale rate for potable water. The District’s wholesale rate shall be the sum of the “Zone 2 Basic Water User Charge” and the “Treated Water Surcharge” rates in effect at the time of exchange. The City’s wholesale rate shall be the “Schedule W-25 – Wholesale Use With Long-Term Contract” rate in effect at the time of exchange, except that the monthly service charge shall not apply. The payment shall be made within ninety (90) days of the request of the Party who holds the credit.

Article 3 Effective Date

Each of the modifications set forth in Article 2 shall be effective on and after the date of this Amendment, subject to the approval of the San Francisco Public Utilities Commission, San Francisco Board of Supervisors, and Santa Clara Valley Water District Board of Directors.

Article 4 Legal Effect

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and the District have executed this Second Amendment as of the date first referenced above.

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Rick Callender
Chief Executive Officer

Date

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By: _____
Dennis J. Herrera
General Manager

Date

Authorized by SFPUC Resolution No. _____

Date

Approved by Board of Supervisors Resolution No. _____

Date

APPROVED AS TO FORM:

David Chiu
City Attorney

By: _____
Deputy City Attorney